

State of California



Fair Political Practices Commission

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May 6, 1985

Honorable Willie L. Brown, Jr.
Speaker of the Assembly
State Capitol
Sacramento, CA 95814

Re: Advice Letter No. A-85-102

Dear Speaker Brown:

I have reviewed the article you sent me concerning those members of the University of California Board of Regents who own stock in companies which do business in South Africa. Since the Regents may soon be making decisions concerning divestment of UC's holdings in these companies, a question has arisen as to whether these Regents must disqualify themselves from the divestment decisions.

Under Government Code Section 84113(b), any member of the Board of Regents who owns stock in companies doing business in South Africa can ask us for formal written advice concerning the disqualification requirements of the Political Reform Act. An official who acts in reliance on such formal advice has complete immunity from any administrative action, and a good faith defense against any court action, relating to the subject of the advice. We will be happy to provide prompt formal advice upon the request of any Regent who owns stock which may be the subject of divestment decisions by UC.

Since we have not been asked for advice on behalf of any Regent who owns stock in any of the companies in question, I can only give you a general outline of how the Political Reform Act applies to public officials (including Regents, legislators, and other officials) who may be faced with divestment decisions. Under the Act, a public official must disqualify himself from a decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on a business entity in which the official, or the official's spouse or minor child, has an investment of \$1,000 or more. Government Code Sections 87100, 87103. When we are talking about large companies which are

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traded on the New York or American Stock Exchanges, an effect on the company is material if it will:

(a) Increase or decrease the company's annual gross revenues by at least \$250,000 (\$1,000,000 if it is a Fortune 500 company),

(b) Increase or reduce the company's expenses by at least \$100,000 (\$250,000 if it is a Fortune 500 company), or

(c) Increase or decrease the company's assets or liabilities by at least \$250,000 (\$1,000,000 if it is a Fortune 500 company).

Any Regent, legislator, or other public official, who has an investment in a company that may be affected by a divestment decision, should seriously consider whether his or her disqualification from that decision is required by the Political Reform Act. Of course, without more information both as to specific divestment decisions being contemplated, and as to the probable effect of those decisions on the companies in question, I can not say whether any disqualification would be required. If we are asked for formal advice on this subject, and are given the necessary information about the contemplated decisions and their probable effects, we will be able to provide more definitive answers.

Very truly yours,


Barbara A. Milman
General Counsel

BAM:nwm

(cont)
Harrington, a financial adviser, stockbroker and one-time chairman of the state public investment task force formed by former Gov. Jerry Brown, cited another potential conflict. Regents, in their role as managers of UC pension funds and endowments, have access to non-public investment expertise, he said.

"How are they not going to use that information to their own advantage?" Harrington asked. "It's just human nature."

Leslie Gallagher, UC senior investment officer, conceded that regents could use "so-called expert" information to "feather their own nests." But he "strongly" disagreed that such behavior is inevitable and said, "We all have to have the highest degree of ethics and not trade on non-public" recommendations.

Besides, said Gallagher, "it would be logical to assume that the same successful companies would be used (for investments) by a lot of people."

Divestiture of UC's South African interests has been a long-running controversy, reaching back to 1977 when an unsuccessful proposal to sell such stocks was floated by then-Lt. Gov. Mervyn Dymally.

But as discontent among critics has deepened in recent weeks and the ranks of protesters increased almost daily in California — as well as at campuses across the country — UC regents appear readier than ever before to resolve the issue. Last week, 13 regents attended a rally of 7,000 at UC Berkeley, where protesters argued for divestment for four hours.

That interest is in marked contrast to their attitude in 1978, when regents rejected a proposal to establish a "socially responsible investment policy" and advisory council.

Honig has said that while divestment is a complex issue, it also is a moral one. And while he has said he has not made up his mind how he will vote on the issue, he believes the regents must change the status quo.

Said Honig, "We must do something to register our opposition to that regime."